

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
05-CR-173A

KAREN PIERCE
a/k/a Karen Burns,
a/k/a Momma-Love,

Defendant.

On March 2, 2006, defendant Karen Pierce filed a motion to suppress evidence seized pursuant to an unsigned search warrant executed at 204 Bird Avenue, Buffalo, New York. The case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(A), on March 9, 2006. On June 16, 2006, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion to suppress be denied.

Defendant filed objections to the Report and Recommendation on July 10, 2006 and the government filed a response thereto. Oral argument on the objections was held on August 22, 2006.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument

from counsel, the Court adopts the proposed findings of the Report and Recommendation. In addition to the reasons cited by the Magistrate Judge, the Court also finds that the so-called “good faith” exception to the warrant requirement enunciated by the United States Supreme Court in United States v. Leon, 468 U.S. 897 (1984), applies in this case.

The Court further notes that the defendant contends that she should be afforded an evidentiary hearing on her motion. Defendant has failed, however, to make a showing that she could offer any evidence that would bring this case within the Second Circuit’s formulation of circumstances making it appropriate to apply the exclusionary rule to the infractions of Federal Rule of Criminal Procedure 41 at issue here. See United States v. Turner, 558 F.2d 46, 52 (2d Cir. 1977); United States v. Burke, 517 F.2d 377, 386-87 (2d Cir. 1975). It is clear that what happened here is that the Magistrate Judge intended to sign the warrant, but inadvertently did not. Thus, the Court finds that a hearing is unnecessary. See Turner, 558 F.2d at 53 (quoting Burke, 517 F.2d at 387).

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation and herein, defendant's motion to suppress is denied. The Court also adopts the remainder of Magistrate Judge Foschio’s Report and Recommendation to which is there are no objections.¹

¹ Defendants Maurice Fisher and Shauncey Galarza both moved for an extension of time to file objections and the Court granted the extension. However, neither defendant ever filed any objections.

All counsel in the case are ordered to appear on September 25, 2006 at 2:00 p.m. for a meeting to set a trial date.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 22 , 2006